

PATENT (US)

Attorney Docket No. TELNP113USB

**COMBINED DECLARATION AND POWER OF ATTORNEY
(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT)**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Title: **WIRELESS SOFTWARE UPGRADES WITH VERSION CONTROL**

the specification of which

(a) is attached hereto.

(b) X was filed on December 10, 1998 as U.S. Serial No. 09 /208,785 or Express Mail No. _____, as Serial No. not yet known, and was amended on _____ (if applicable).

(c) was described and claimed in PCT International Application No. _____ filed on _____ and amended under PCT Article 19 on _____ (if any).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations §1.56(a).

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.

**PRIOR U.S. OR PCT APPLICATIONS
DESIGNATING THE U.S. FOR BENEFIT UNDER 35 USC 120**

APPLICATION NO.

U.S. FILING DATE
(day month, year)

STATUS
(Patented, Pending, Abandoned)

POWER OF ATTORNEY

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number)

Nainesh P. Shah	Reg. No. 40,166
Mark D. Saralino	Reg. No. 34,243
Himanshu S. Amin	Reg. No. 40,894

Send Correspondence To	Direct Telephone Calls To: (name and telephone number)
Nainesh P. Shah Renner, Otto, Boisselle & Sklar, P.L.L. 1621 Euclid Avenue Nineteenth Floor Cleveland, Ohio 44115-2191	Nainesh P. Shah (216) 621-1113

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued therein.

Full name of sole or first inventor Mark A. Criss
Inventor's signature Mark A. Criss
Date _____ Country of Citizenship United States
Residence The Woodlands, Texas
Post Office Address 2 Redhaven Place
The Woodlands, Texas 77381
Full name of second joint inventor, if any Paul A. Cowan
Inventor's signature _____
Date _____ Country of Citizenship Canada
Residence Hinckley, Ohio 44233
Post Office Address 2531 Laurel Road
Hinckley, Ohio 44233

**CHECK FOR ANY OF THE FOLLOWING ADDED PAGE(S) WHICH
FORM A PART OF THIS DECLARATION**

- Signature for third and subsequent joint inventors. Number of pages added _____.
- Added page to combined declaration and power of attorney for divisional, continuation, or continuation-in-part (CIP) application.
- Added page to combined declaration and power of attorney for signature by joint inventor on behalf of nonsigning inventor who refuses to sign (37 CFR 1.47(a))

**ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY
FOR DIVISIONAL, CONTINUATION OR CIP APPLICATION**

(complete this part only if this a divisional, continuation or CIP application)

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Codes, §120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.

**PRIOR U.S. APPLICATIONS OR PCT INTERNATIONAL APPLICATIONS
DESIGNATING THE U.S. FOR BENEFIT UNDER 35 USC 120:**

	U.S. APPLICATION NO.	U.S. FILING DATE	PATENTED	PENDING	ABANDONED
1.	<u>09/023,857</u>	<u>February 13, 1998</u>		X	
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____

	PCT APPLICATION NO.	PCT FILING DATE	U.S. SERIAL NOS. ASSIGNED
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

**ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY
FOR SIGNATURE BY JOINT INVENTOR ON BEHALF OF NONSIGNING
INVENTOR WHO REFUSES TO SIGN (37 CFR 1.47(a))**

- I. I am an above named joint inventor and have signed this declaration on my own behalf and also sign this declaration under 37 CFR 1.47(a) on behalf of the nonsigning joint inventor, particulars for whom are:

Full name of first nonsigning inventor who refuses to sign: Paul A. Cowan

Country of Citizenship Canada

Residence Hinckley, Ohio 44233

Post Office Address 2531 Laurel Road

Hinckley, Ohio 44233

II. Accompanying this declaration is:

- (1) A STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR
- (2) THE PETITION FEE OF \$130.00 (37 CFR 1.17(i))

Mark A. Criss

type or print name of joint inventor
signing on behalf of nonsigning
inventor



Signature

X This declaration ends with this page

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PATENT

TELNP113USB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mark A. Criss et al.

For: WIRELESS SOFTWARE UPGRADES WITH VERSION CONTROL

the specification of which

- (a) is attached hereto
- (b) X was filed on December 10, 1998,
as Application Serial No. 09/208,785
and assigned to Art Unit 2744

**STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING
INVENTOR (37 CFR 1.47)**

This statement is made as to the exact facts that are relied upon to establish the diligent effort to secure the execution of the declaration by the nonsigning inventor for the above-identified patent application before deposit thereof in the Patent and Trademark Office. A similar "Statement of Facts in Support of Filing on Behalf of Nonsigning Inventor" is also being provided in co-pending U.S. patent application titled "Wireless Software Upgrades with Version Control" and having a filing date of January 21, 1999 (serial no. 09/234813).

I. Identification of person making statement of facts

This statement is being made by the available person having first-hand knowledge of the facts recited herein. In particular, this person making the statement of facts is as follows:

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Name: Timothy P. O'Hagan
Address: 31 White Bark Place
The Woodlands, TX 77381

II. The last known address of the nonsigning inventor

The last known address of the nonsigning inventor is as follows:

Full name of first nonsigning inventor who refuses to sign: Paul A. Cowan
Country of Citizenship Canada
Address 2531 Laurel Road
Hinckley, Ohio 44233

III. Details of refusal of nonsigning inventor to sign application papers

The following are the facts in support of demonstrating that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings and declaration) to the nonsigning inventor for signature:

1. I am currently patent counsel for Telxon Corporation having its world headquarters in Akron, OH.
2. On August 7, 1996 U.S. Patent Application Serial No. 08/694,637 (hereinafter referred to as the "parent case") was filed for an invention titled "Wireless software upgrades with version control" on which Paul A. Cowan (hereinafter referred to as "Mr. Cowan") was the named inventor. The parent case has since issued as U.S. Patent No. 5,848,064.

3. At the time of filing the parent case, Mr. Cowan was an employee of Telxon Corporation and had assigned all rights in the invention to Telxon Corporation in accordance with his obligations under his employment contract. A copy of such assignment is attached hereto as Exhibit A. Mr. Cowan assigned all rights to the invention including any divisional, renewal, substitute, continuation and Convention applications to Telxon.
4. On February 13, 1998, a continuation of the parent case was filed and assigned Serial Number 09/023,857.
5. On December 10, 1998, the present application was filed as a continuation-in-part of the 09/023,857 application and assigned Serial Number 09/208,785 (hereinafter referred to as the "present application").
6. The inventors listed on the present application are Mark A. Criss and Paul A. Cowan.
7. Mr. Cowan is no longer an employee of Telxon Corporation and was not an employee at the time of filing the present application.
8. Mr. Cowan's contributions to the present invention stem solely from the inventive features described in the parent case from which the present application claims priority. Mr. Cowan's contributions are included in at least pending claim 1 of the present application.

9. On January 26, 1999, Mr. Cowan and I had a telephone conversation during which time I requested that Mr. Cowan agree to read, review and understand the present application and sign both a "Combined Declaration and Power of Attorney" and an "Assignment".
10. During the January 26, 1999 telephone conversation, Mr. Cowan expressly stated to me that he is unwilling to receive a copy of the present application and refuses to read, review and understand its content. Mr. Cowan also stated that he would refuse to sign the "Combined Declaration and Power of Attorney" since it requires that Mr. Cowan state that he read, reviewed, and understands the present application.
11. On February 1, 1999, I hand carried a copy of the present application (specification including claims and drawings), the "combined Declaration and Power of Attorney" and the "Assignment" to the following location where I met Mr. Cowan: 308 N. Cleveland
Mission Rd., Akron OH. Upon meeting Mr. Cowan, I again requested that Mr. Cowan read, review and understand the present application and sign the "Combined Declaration and Power of Attorney" and "Assignment".
12. During the February 1, 1999 meeting, Mr. Cowan again indicated his refusal to read, review and understand the present application, execute the "Combined Declaration and Power of Attorney", or execute the "Assignment". Mr. Cowan's refusal to sign is due to his concern with potential liability associated with gaining knowledge of the new material added in present application after his time of employment

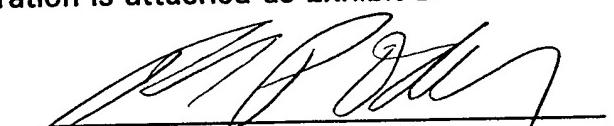
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with Telxon in view of the fact that he is now employed by a competing company.

13. As written proof of his refusal to sign, Mr. Cowan signed the attached "Acknowledgment of Refusal to Sign" during the February 1, 1999 meeting with me. The Declaration is attached as Exhibit B.

Date: February 1, 1999



Signature of person making statement
Timothy P. O'Hagan

EXHIBIT A

08/694637

ASSIGNMENT

For One Dollars (\$1.00) and other good and valuable consideration received of the hereinafter named signee, receipt of which is hereby acknowledged, the undersigned:

Paul A. Cowan
2531 Laurel Road
Hinckley, Ohio 44233

hereby sells and assigns to TELXON CORPORATION, a corporation of Delaware having a place of business at 3330 West Market Street, Akron, Ohio 44333, its successors and assigns, the entire right, title and interest so far as concerns the United States and the Territories and Possessions thereof and all foreign countries, in and to the inventions entitled

WIRELESS SOFTWARE UPGRADES WITH VERSION CONTROL

for which application for United States Letters Patent has been filed on _____ under Serial No. _____, or was executed on the date below and is being filed concurrently herewith, said application for United States Letters Patent, any and all other applications for Letters Patent on said inventions in countries foreign to the United States, including all divisional, renewal, substitute, continuation and Convention applications based in whole or in part upon said inventions or upon said applications, and any and all Letters Patent and reissues and extensions of Letters Patent granted for said inventions or upon said applications, and every priority right that is or may be predicated upon or arise from said inventions, said applications and said Letters Patent; said assignee being hereby authorized to file patent applications in any or all countries on any or all said inventions in the name of the undersigned or in the name of said assignee or otherwise as said assignee may deem advisable, under the International Convention or otherwise; the Commissioner of Patents and Trademarks of the United States of America and the empowered officials of all other governments being hereby authorized to issue or transfer all said Letters Patent to said assignee in accordance herewith; this assignment being under covenant, not only that full power to make the same is had by the undersigned, but also that such assigned right is not encumbered by any grant, license, or other right heretofore given, and that the undersigned will do all acts reasonably serving to assure that said inventions, patent applications and Letters Patent shall be held and enjoyed by said assignee as fully and entirely as the same could have been held and enjoyed by the undersigned if this assignment had not been made, and particularly to execute and deliver to said assignee all lawful documents including petitions, specifications, oaths, assignments, invention disclaimers, and lawful affidavits in form and substance which may be requested by said assignee, to furnish said assignee with all facts relating to said inventions or the history thereof and any and all documents, photographs, models, samples or other physical exhibits which may be useful for establishing the facts of conception, disclosure and reduction to practice of said inventions, and to testify in any proceedings relating to said inventions, patent applications and Letters Patent.

Attested By:

Paul A. Cowan

Signed:

Paul A. Cowan

Date:

8/6/96

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EXHIBIT B

ACKNOWLEDGMENT OF REFUSAL TO SIGN

I, Paul A. Cowan, hereby state that on FEB. 1, 1999, I had a personal meeting with Timothy P. O'Hagan at the following location: 308 NORTH CLEVELAND-MASSILLON RD, AKRON OH. During the meeting, Mr. O'Hagan tendered to me a copy of patent application Serial No. 09/208,785, filed on December 10, 1998 and entitled "WIRELESS SOFTWARE UPGRADES WITH VERSION CONTROL" (specification including claims and drawings). Further, I attest that on this date Mr. O'Hagan also tendered to me a "Combined Declaration and Power of Attorney" and an "Assignment" for execution in this matter. I did not accept, read, review or maintain any copies of the above documents tendered to me by Mr. O'Hagan.

I am no longer employed by Telxon Corporation and therefore I am concerned with potential liability associated with gaining knowledge of the new material added in present application after my time of employment with Telxon. Therefore, upon being provided with each of these documents, I attest that I refused to read, review and understand patent application Serial No. 09/208,785 and also refused to sign the "Combined Declaration and Power of Attorney" and "Assignment".



Paul A. Cowan

Feb 1 1999
Date